

## **MINUTES**

### **BOARD OF ADJUSTMENT**

#### **TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY**

Regular Meeting

May 28, 2015

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

#### **Oath of Public Officers – Newly Appointed Members**

Robert Delia – replacement of unexpired term to end 12/31/17

The oath of office was administered by Mr. Bernstein prior to the start of the meeting.

#### **Roll Call:**

Members present were Mr. Sullivan, Mr. Miller, Mr. Smith, Mr. Siburn, Mr. Nappi, Mr. Delia and Mr. Sylvester. Mr. Boyer was absent. Mr. Daniel Bernstein, Board Attorney, was also present.

#### **Applications for Review:**

#### **CARRIED FROM APRIL 23, 2015:**

##### **App.#4-14: Berkeley Heights Realty, Inc., (Enrite gas station), 525 Springfield Ave., Block 611, Lot 7 (HB-3 Zone)**

Application for preliminary and final site plan approval with variances for a canopy over the gas station pumps and a kiosk as added accessory structures to the site. The applicant appeared before the Board in 2013 (App.#26-12: Ilya Shlakman), and a Certificate of Prior Nonconforming Status of the gasoline service station and repair garage was granted by the Board of Adjustment.

Steven Schaffer, attorney for the applicant, advised that the application involves a canopy and kiosk. The applicant has made several site improvements and has presented expert witnesses as to the proposed canopy, the lighting and the variances being requested. The applicant is seeking preliminary and final site plan approval with variance relief for the canopy and kiosk.

### **Open to Public**

The hearing was opened to the public for comments or questions regarding the application. There were no members of the public who had comments or questions.

Mr. Schaffer gave a lengthy summation of the application, reviewed the testimony of the applicant's witnesses, and discussed the legal issues and requested variances. He also discussed the improvements already made and those proposed to be made by the applicant. He noted that the variances can be granted without substantial detriment to the public good. Mr. Schaffer summarized his analysis of the existing canopies throughout Berkeley Heights and provided information regarding the size and height of those canopies. Mr. Schaffer presented Summation Exhibit 1 – a listing of proposed conditions of approval.

Mr. Bernstein noted that if the application is approved the approval would also be subject to whatever conditions he and Mr. Mistretta would formulate. A copy of a proposed resolution would be sent to Mr. Schaffer for his review.

Discussion took place with regard to the comparison of the proposed canopy to the other existing canopies in Berkeley Heights and canopies that the applicant suggested the Board members visit.

Mr. Mistretta reviewed the requested variances as well as the 12 existing variance conditions on the property and the existing deficiencies on the property. He noted that none of the existing variance conditions have been reduced in any way. Mr. Mistretta stated the opinion that the applicant has gone a long way to try to conform to the Board's suggestions.

Mr. Schaffer stated that those 12 existing variances were considered when the Board granted certification of the pre-existing non-conforming use. The new variances being requested do not exacerbate those existing conditions. He does not think they are relevant and the Board should only consider how the two new variances affect the property.

In response to questions from the Board, Mr. Schaffer stated that the applicant has previously stipulated to whatever is on the record as to the free standing sign and would also agree to a second decorative lamp on the Plainfield Avenue side of the building.

Mr. Sullivan stated that he is concerned about the 21' height of an accessory structure in a front yard.

Mr. Mistretta stated that the canopies that Mr. Schaffer discussed are mostly attached to the side of the buildings and smaller. The proposed canopy is free standing in the center of the property and is approximately 66% of the existing building in mass.

Mr. Schaffer stated that the canopies are functionally attached whether it is on the side or not. The canopies can be seen going down Springfield and Snyder Avenues. As to the height, Mr. Schaffer stated that the height can be reduced by eliminating the 3' of molding.

Mr. Sullivan presented Exhibit BA-1 – photo showing a site with two separate canopies.

Ilya Shlakman, previously sworn, explained why two separate canopies would not work and will not satisfy the needs of the customers and employees.

#### Board Discussion

Mr. Sullivan stated that he appreciates the site work that has been done and the change in the LED sign but he is concerned about approving an accessory structure of the size proposed in the front yard.

Mr. Miller stated that the approval of the pre-existing use as a gas station offered an opportunity to improve the property. The proposed accessory structure in the front yard is not as detrimental as the previous condition of the property and he can live with it.

Mr. Smith said he does not like the size of the canopy in this part of town. He sees a thriving business now and does not think that not having a canopy will be a detriment to that business. He is leaning toward disapproval because the canopy will be a significant object in the center of town.

Mr. Siburn stated that he likes the canopy and thinks it enhances the property. He would like to see the size cut by 3' if they keep the colonial look.

Mr. Sylvester said the intersection as it exists now is unacceptable and he thinks this would be an improvement aesthetically.

Mr. Nappi stated that he thinks the applicant has been very accommodating with changes they were willing to make and he thinks the canopy will enhance the property.

Mr. Delia stated that he feels the canopy would be overpowering for the location and it will be much closer to Springfield Avenue than any of the other canopies. If the height could be reduced he might be more comfortable with it.

Discussion took place as to whether to continue with the vote or carry the application. Mr. Schaffer requested that Mr. Boyer be allowed to listen to the recording of the hearing so that there can be seven members of the Board eligible to vote. The applicant will reduce the size of the canopy by a few feet.

The hearing of the application was carried to the next meeting of the Board on June 11, 2015 with no further notice required.

**CARRIED FROM APRIL 23, 2015:**

**App. #32-14: Ronnie & Emilie Nieves, 25 Liberty Avenue, Block 2004, Lot 2**

At the public hearing of this application on January 22, 2015, the Board voiced concerns about the significant impervious coverage ratios. As a result, many changes were made to the original plans, including elimination of the proposed breezeway, removal of the detached garage with a new garage to be attached to the house, changing the wrap-around porch to a front porch, etc. Revised plans were submitted to the Board Office ten days prior to the April 23 public hearing date. (R-15 Zone)

Albert Anikwe, architect, who was previously sworn, stated that as a result of the last meeting the proposal now is to eliminate the existing driveway in its entirety. The new proposed driveway will be directly in front of the garage and it will be 17' wide and 26' long. At the rear of the building the concrete pad has been eliminated.

In response to questions from the Board, Mr. Anikwe stated that the size of the building has been reduced, the breezeway has been eliminated and the garage will be closer to the building. The basement will be a utility basement now but may be used as a recreation room in the future. The height of the building will be 27'-29' and 30' is the maximum permitted.

Mr. Sullivan said he appreciates that the applicant listened to the Board and is now proposing a reasonable size house on a small lot and has eliminated a significant amount of impervious coverage.

### **Open to Public**

The hearing was opened to the public for comments or questions regarding the application. There were no members of the public who had comments or questions.

A motion was made by Mr. Smith, seconded by Mr. Sylvester, with respect to App #32-14: Ronnie & Emilie Nieves, 25 Liberty Avenue, Block 2004, Lot 2, to approve the application with variances, subject to conditions as discussed and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was 6-0 with Mr. Sullivan, Mr. Miller, Mr. Smith, Mr. Nappi, Mr. Delia and Mr. Sylvester voting in favor and none opposed.

### **App.#11-15: Berkeley Square, L.L.C., 240-264 Springfield Ave., Bl. 801, L. 23 & 24**

The property (Primrose School and retail building) was subject to Site Plan approval through the Zoning Board of Adjustment, App.#18-12. As part of the approval, one "plaza" sign, 6' x 4' (24 sq. ft.) was approved for installation. The applicant is now proposing to install another freestanding or ground sign to accommodate the retail building which contains three tenant units. The proposed sign would be 4' x 6' x 7' high. Relief is needed from Section 10.1.4C of the Municipal Land Use Procedures Ordinance which states that the site plan, as approved, shall be binding on the applicant, Section 10.8.8A which makes failure to comply with the approved site plan a violation of the ordinance, and Section 5.4.2 (Zone HB-2) permitting only one plaza sign.

James Webber, attorney for applicant, stated that this application is with regard to the existing site of the Primrose School. The applicant is proposing another monument sign to identify the three retail stores on the site. There are currently two tenants and one proposed tenant. The proposed tenant is a drop dry cleaner. The applicant has discussed the parking requirements of the proposed tenant with Mr. Mistretta. The use as a dry cleaning establishment is permitted under the ordinance.

Mr. Mistretta advised that testimony is needed from the applicant with regard to parking.

Brian Silbert, representative of Berkeley Square LLC, was sworn and stated that the sign that is proposed for the second building is for three tenants. The second building is set back from the road and there is a retaining wall in the front so the building is not that visible from the road. Consumers need to know that there are stores there and the applicant is proposing a tasteful sign consistent with other signage in the municipality. The sign would be illuminated with low wattage spotlights on either side and will be consistent with the theme of the overall project.

Mr. Silbert presented Exhibit A-1 – photograph of the site with the proposed sign superimposed. The proposed sign would be the same square footage as the existing sign for Primrose School but different dimensions. He stated that the applicant would be willing to work with the Downtown Beautification Committee regarding the sign and will keep the new tenant signs consistent with the existing Primrose sign.

Discussion took place regarding the colors of the lettering on the tenant sign. The applicant agreed to use the same colors as used in the Primrose sign with a white background and red and black lettering.

Laura Kostovich, representative of the sign company, was sworn and stated that the signs are the same in square footage but have different dimensions. The material of the signs will be komcel, which is a pvc material and the same material as used for the Primrose sign.

Mr. Silbert stated that the sign will be 8' back from the property line and will not interfere with sight lines.

Fung Soo Park, Ramapo, NJ, was sworn and with the assistance of his son, Sung Park, also sworn, stated that he is the proposed dry cleaner drop store tenant. The hours of operation are 7 am to 6 pm Monday thru Friday, 7 am to 5 pm on Saturday and closed on Sunday. Material is delivered to the place that processes it by minivan twice a day. He has two employees who will be at the premises one at a time. The average time that a customer is in the store is 1-2 minutes. They will provide tailoring service and the busiest time of the day for the business is lunchtime.

Sung Park stated that he helps at the store. No dry cleaning will be done at the store. They have two other stores, one in New Providence and one in Madison.

Mr. Mistretta stated that there are four parking spaces available and the applicant has a variance for one. This is a low impact use and he believes it will fit.

### **Open to Public**

The hearing was opened to the public for comments or questions regarding the application.

Julie Lloyd, Downtown Beautification Committee, asked if the background of the tenant sign be the same color as the Primrose sign.

Mr. Silbert said it will be the same color.

Discussion took place regarding the sign. The sign will be 7' x 6' with three slats for tenant names. The letters will be red and black and the background will match the existing Primrose sign which is white. Lights on the sign must be off by 10 pm.

A motion was made by Mr. Miller, seconded by Mr. Siburn, with respect to App.# 11-15: Berkeley Square, L.L.C., 240-264 Springfield Ave., Bl. 801, L. 23 & 24 to approve the application with variances, subject to the conditions as discussed and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was 7-0 with Mr. Sullivan, Mr. Miller, Mr. Smith, Mr. Siburn, Mr. Nappi, Mr. Delia and Mr. Sylvester voting in favor and none opposed.

### **App.#9-15: 569 Springfield Avenue, LLC, 569 Springfield Ave., Bl.610, L.8 (HB-3 Zone)**

The applicant is proposing to demolish an existing single family dwelling and construct one new building containing eight condo units (with four units on the first floor and four units on the second floor). Based on the definitions and intent of the ordinance, such as Section 2.1.1B and Section 6.3.3A.4.C, a use variance in accordance with MLUL 40:55D-70(d)(1) is needed because the ordinance allows certain types of "townhouses" with no more than six attached dwelling units and requires strict adherence to the requirements for townhouse developments. As a result, the proposed building, as designed, is not a permitted use. The applicant also seeks variances for exceeding permitted coverage ratios and driveway width as well as any other variances that may be needed.

August Santore, attorney for applicant, stated that the applicant is proposing to build an 8-unit apartment project.

Michael Tobia, Planner, was sworn and accepted as an expert witness. Mr. Tobia stated that the property is located off Springfield Avenue between The Hacienda and Sub Zone restaurants. The house sits up on a hill between those restaurants. The proposal is to knock down the old existing house and build 8 apartment units that will be for sale.

Mr. Tobia presented Exhibits A-1 through A-4 – photo boards of the property including the front elevation of the existing house that is in very poor condition, the rear façade of the building showing additions made over the years, the westerly façade facing the driveway and the detached garage at the back of the property.

Mr. Tobia stated that the apartment units will be one floor and the intent is to market them to empty nesters. There will be four units on each floor, four on the first floor and four on the second floor. There will be an 18 stall parking lot in the rear. The ordinance requires two parking stalls per unit so this will have more parking than required. The existing curb cut will be the curb cut for the new building. The driveway will be located on the westerly side of the building and the trash enclosure will be located in the upper left corner. The building will be somewhat closer to the street than the existing house but will still have a 20.5' setback from the street.

Mr. Tobia presented Exhibit A-5 – two renderings on one sheet of how the building will look from the front and from the rear and the parking lot view. Mr. Tobia stated that the applicant's architect has met with Mike Mistretta to go over design standards. The architecture will be traditional with gables, pitched roof, hardy plank siding, stone veneer and shutters. Mr. Tobia further stated that this property is located in the HB-3 zone where housing is permitted in the form of single family homes and townhomes. Apartments such as the proposed are also permitted but they are relegated to second floor or third floor above retail. The applicant proposes ground floor residential as well as second floor so a D variance is required. The zone also permits offices, banks, retail, restaurant, schools and daycare and multi-use structures.

Mr. Tobia stated that a variance will be required for coverage. The proposed other coverage is 45.5% where 35% is permitted. A variance is also required for the width of the driveway which is proposed to be 23' where a maximum of 22' is allowed. All setback requirements are met as well as the requirements for total coverage and building coverage, height and parking. The applicant's vision is to bring housing that provides one floor living into the downtown area. The units will be a little over 1200 square feet and will have two bedrooms, two baths, kitchen, dining area and living room. The project does not include affordable housing but



the applicant would be willing to contribute to a fund. The applicant is willing to meet the Section 19 requirements for street lighting and plantings along Springfield Avenue.

### **Open to Public**

The hearing was opened to the public for questions regarding Mr. Tobia's testimony. There were no members of the public who had questions.

Robert Gazzale, engineer, was sworn and accepted as an expert witness. Mr. Gazzale stated that he has been working with the applicant on different layouts and buildings. The site is very steep with an 18' change in grade from the sidewalk to the back of the lot. The building is closer to the road and the access from the parking lot is practically on grade. The driveway is fairly steep. The storm water management system has been designed in accordance with Union County standards and it has been located where it would create the least amount of impact. The driveway is proposed to be 23' wide because the applicant prefers to have it slightly wider for maneuvering and for access by emergency vehicles. Reducing the driveway to 22' would reduce coverage only slightly and a variance for coverage would still be required.

Mr. Mistretta noted that a variance will be required for the proposed retaining wall in the front yard that is over 4'.

Mr. Gazzale stated that the front wall will be 8' and the storm water management will be located between the wall and property line.

Discussion took place regarding the retaining wall and how it can be softened. Mr. Gazzale stated that the wall will be located 15' from the sidewalk on Springfield Avenue and will be softened with landscaping. He further stated that the only way to provide interior landscaping in the parking lot would be to remove a parking space and that could obstruct accessibility for emergency vehicles.

### **Open to Public**

The hearing was opened to the public for questions regarding Mr. Gazzale's testimony. There were no members of the public who had questions.

The hearing was opened to the public for comments or questions regarding the application.

Julie Lloyd, Downtown Beautification Committee, was sworn and read a listing of the Committee's recommendations as to the building's color, materials and signage.

Mr. Santore stated that the applicant has a copy of the recommendations and will consult with the Committee.

Marie Imbimbo Shonberg, 153 Washington Street, was sworn and stated that she is concerned about the height of the building. Her property is on Washington Street directly behind the Hacienda restaurant.

Mr. Tobia stated that there will be a living fence along the back of the property line, mostly evergreen. The building will be about 80' from the property line and he does not believe it will have a visual impact on Ms. Shonberg's property.

Jun Hu, Washington Street, asked how the building height is measured, how much additional traffic will be generated and how it will be handled and what the trash enclosure will look like.

Mr. Gazzale stated that the height is measured from the finished grade of the building to the midpoint of the roof. There will be no access to or from the property from Washington Street so there will be no impact on traffic on that street. The egress and ingress will be from Springfield Avenue. The trash will be enclosed by a board on board fence.

Yue Cai, Washington Street, was sworn and stated that she owns the property next to the project. She asked how far the building will be from the property line and what kind of buffering will be provided.

Mr. Gazzale stated that the building will be 80' from the property line and the buffering will consist of maple trees and arborvitae.

Mr. Miller noted that there will be more discussion on buffering at the next meeting.

The hearing of the application was carried to the next meeting of the Board on June 11, 2015 with no further notice required.

**Adoption of Minutes**

May 14, 2015 Conference and Regular Meeting

A motion was made by Mr. Siburn, seconded by Mr. Miller, and carried by unanimous voice vote to adopt the minutes of the May 14, 2015 Regular Meeting as presented.

**Adjournment:**

A motion was made by Mr. Miller, seconded by Mr. Delia, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 11:00 PM.

Regina Giardina, Secretary Pro Tem